

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Fort Collins, Creede, Westcliffe and

Wheat Ridge, Colorado)

MB Docket No. 03-57

RM-10565

MEMORANDUM OPINION AND ORDER**Adopted: August 4, 2004****Released: August 9, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Meadowlark Group, Inc. ("Meadowlark") directed to the *Report and Order* in this proceeding.¹ Jacor Broadcasting of Colorado, Inc. ("Jacor Broadcasting") filed an Opposition to Petition for Reconsideration and Meadowlark filed a Reply to Opposition. Meadowlark also filed a Motion to Consolidate and Jacor Broadcasting filed an Opposition to Motion to Consolidate. For the reasons discussed below, we are denying the Petition for Reconsideration and the Motion to Consolidate.

Background

2. At the request of Tsunami Communications, Inc., former licensee of Station KTCL, Channel 227C, Fort Collins, Colorado, the *Notice of Proposed Rule Making* in this proceeding proposed the substitution of Channel 227C0 for Channel 227C at Fort Collins, reallocation of Channel 227C0 to Wheat Ridge, Colorado, and modification of the Station KTCL license to specify operation on Channel 227C0 at Wheat Ridge.² To accommodate Channel 227C0 at Wheat Ridge, the *Notice* also proposed the substitution of Channel 249A for vacant Channel 227A at Westcliffe, Colorado. In response to the *Notice*, Meadowlark filed a Counterproposal proposing the allotment of Channel 248C to Creede, Colorado, as a first local service. In order to accommodate Channel 248C at Creede, Meadowlark proposed channel substitutions at three vacant allotments. Specifically, Meadowlark proposed the substitution of Channel 257A for Channel 247A at Lake City, Colorado, substitution of Channel 277A for Channel 248A at Poncha Springs, Colorado, and substitution of Channel 248C1 for Channel 249C1 at Raton, New Mexico. The proposed Channel 277A substitution at Poncha Springs also requires the reclassification of Station KRFX, Channel 278C, Denver, Colorado, to Channel 278C0. To this end, we had already issued an *Order to Show Cause* directed to Jacor Broadcasting, also the licensee of Station KRFX, to show cause why its license should not be reclassified to specify operation on Channel 278C0 in order to accommodate a separate proposal by Akron Broadcasting Company for a Channel 279C1 allotment at Akron, Colorado.³

¹ *Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 19 FCC Rcd 4821 (MB 2004).

² *Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 18 FCC Rcd 4461 (MB 2003). Jacor Broadcasting is now the licensee of Station KTCL.

³ *Reclassification of License of Station KRFX, Denver, Colorado*, 18 FCC Rcd 3220 (MB 2003).

3. The *Report and Order* substituted Channel 227C0 for Channel 227C at Fort Collins, Colorado, reallocated Channel 227C0 to Wheat Ridge, Colorado, and modified the Station KTCL license to specify operation on Channel 227C0 at Wheat Ridge. In doing so, it dismissed the Meadowlark Counterproposal. As stated above, the Meadowlark Counterproposal for a Channel 248C allotment at Creede, Colorado, requires the substitution of Channel 277A for Channel 248A at Poncha Springs which, in turn, requires the reclassification of Station KRFX to Channel 278C0. In response to the *Order to Show Cause* issued at the request of Akron Broadcasting Company proposing a Channel 279C1 allotment at Akron, Colorado, Jacor Broadcasting filed an application specifying full Class C facilities (File No. BPH-20030424AAO). In the *Report and Order*, we determined the filing of the Station KFRX application was fatal to the Meadowlark Counterproposal as well as the Akron Broadcasting Company proposal.

4. In support of its Petition for Reconsideration, Meadowlark contends that dismissal of its Counterproposal due to the filing of the Station KRFX application specifying full Class C facilities was "cardinal procedural error." Specifically, Meadowlark argues that its Counterproposal was entitled to comparative consideration with the Jacor Broadcasting application proposing full Class C facilities. Meadowlark also asserts that the Jacor Broadcasting application cannot be granted because it incorrectly calculated height above average terrain ("HAAT"). As such, the filing of this application would not be a basis to dismiss its Counterproposal.

Discussion

5. We deny the Petition for Reconsideration. In the 1998 *Biennial Regulatory Review-Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, the Commission set forth the procedure by which a rulemaking proponent make seek a reclassification of a Class C FM station to Class C0 in order to accommodate its proposal.⁴ In the absence of the consent by the Class C station to be reclassified to Class C0, this procedure requires the issuance of an order to show cause. In regard to this procedure, the Commission specifically stated that a notice of proposed rule making will only be issued after the reclassification issue has been resolved.⁵ This is necessary to avoid the disruption of the efficient and orderly processing of rulemaking proposals by avoiding delays and uncertainties for the parties because the ultimate status of the Class C station is not yet known. For this reason, the reclassification procedure is not available to the party filing the counterproposal. As such, the Meadowlark Counterproposal was subject to dismissal. Furthermore, in order to prevent a backlog of rulemaking proposals contingent on the ultimate reclassification of the Class C station, the Commission determined that a rulemaking proposal would be dismissed upon the filing of an acceptable construction permit application by the Class C station. In this situation, Jacor Broadcasting has, in fact, filed an application acceptable for filing and Meadowlark Counterproposal was properly dismissed in accordance with the Commission directive.

6. We also reject the Meadowlark contention that its Counterproposal was entitled to comparative consideration with the Jacor Broadcasting application to maintain Class C status. Station KRFX is currently licensed on Channel 278C and entitled to protection as a Class C station.⁶ In *Biennial Review*, the Commission set forth a limited procedure which, coupled with the Class C station being reclassified to Class C0, could result in consideration of an application or initial rulemaking proposal in conflict with a Class C station. In this instance, we will not consider the Meadowlark Counterproposal in this proceeding because it is not an acceptable *bona fide* proposal entitled to comparative consideration because Jacor Broadcasting has filed the requisite application to maintain Station KFRX's existing

⁴ 1998 *Biennial Regulatory Review-Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules* ("Biennial Review"), 15 FCC Rcd 21649 (2000).

⁵ *Id.* at 21664.

⁶ See 47 C.F.R. § 73.208(a).

protection as a Class C station.⁷ The Jacor Broadcasting application remains pending. In the event that the Station KRFX application is denied and the allotment is ultimately reclassified to Class C0 status, Meadowlark or any other interested party may file a proposal previously precluded by Station KRFX as a Class C facility.

7. This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this Petition for Reconsideration of the *Report and Order* was denied, herein.

8. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration and Motion to Consolidate filed by Meadowlark Group, Inc. ARE DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁷ *C. f. Ashbacker Radio Corporation v. FCC*, 326 U.S. 327 (1945)(requires two *bona fide* applications in order to have comparative consideration).